Lathrop, for the additional reason that the bequest was of a share in the residue, uncertain in amount, so that the testator could not have known the relative size of gift and legacy, and consequently would not be likely to have intended the one in satisfaction of the other. Story, Equity Jurisprudence, § 1115. But this principle ceased to operate when it came to be held that the ademption of a legacy might be partial, as well as total. *Pym* v. *Lockyer*, 5 Myl. & C. 29. See, on the entire subject of the ademption of general legacies, Roper on Legacies, Ch. VI.

"THE UNWISDOM OF THE COMMON LAW." — A somewhat discouraging view of the common law is taken by Mr. J. C. Courtney in a recent address before the Illinois Bar Association. The writer's proposition is that all the learned eulogists of the common law have been mistaken; that, in truth, while great progress has been made in other branches of human learning, the common law has remained stationary, retaining rules which had their origin and meaning in conditions long since passed away. It may be admitted that some rules unsuited to modern conditions have become fixed in our law. The modern mind finds it difficult to see the necessity of a seal, or to understand why a testator's plain intention should be thwarted by the technical rule in *Shelley's Case*. That such rules exist is due to Anglo-Saxon conservatism and to the failure of judges, before yielding to mere antiquity, to consider whether the reasons in which the rules originated are still valid. Few lawyers, however, would agree that such instances preponderate, or that, on the whole, the common law of any given period has not succeeded fairly well in meeting the practical demands of that period. Such a view overlooks the frequent modification of ancient technical rules, and the development of new ones, to meet new conditions, and, in general, the well proved capacity of our law for growth commensurate with the needs of the times.

ONE-MAN COMPANIES AGAIN. — The Queen's Bench Division has had occasion to deal with the question of one-man companies which created some sensation last year in the well known case of *Broderip* v. *Salomon*, [1895] 2 Ch. 323, noticed in 9 HARVARD LAW REVIEW, 280. In the case in question there were two men substantially interested, and an action was brought directly against them by a creditor of the company. All that the court decided was that while the company was not joined there could be no recovery, and it declined to commit itself on the possibility of an eventual liability on the part of the real promoters. *Nunkittrick* v. *Perryman*, 12 *The Times* L. R. 232.

There can be no doubt that *Broderip* v. *Salomon* was meant to strike at one-man companies regardless of their fraudulent intent. Vaughan Williams, J., did talk somewhat of delaying and defrauding creditors, but the Court of Appeal clearly put the decision upon an evasion of the purposes of the Joint Stock Companies Act. It would seem therefore that the decision of the Queen's Bench Division must necessarily be provisional and dependent upon the neglect of the plaintiff to proceed through the company, for it is hardly probable that a lower court would qualify the direct *ratio decidendi* of its superior.

Still we have here not a one-man, but a two-man company. The distinction may be vital, though it would seem not. If the object of the

act be to limit the minimum membership of companies to seven persons substantially interested, it is as difficult to support a company of two or five or six as of one. Yet courts have distinguished cases whose logical results were disagreeable on less grounds than this.

Broderip v. *Salomon* was, to be sure, a hard case, but after all did it justify such radical statements about one-man companies in general? Suppose A wishes to engage in trade with a limited liability. He takes his trade assets, sells them to the company he has formed, registers the stock he receives as paid in property under the English act for that purpose, and starts in trade. What difference is it to the company's creditors that the stock is owned by one man? They have the assets, the stock is paid in full, as the act requires, as well as if twenty had contributed. How does it differ from a company launched with many shareholders, all of whose stock is bought up subsequently by one man? That must be bad too, but it cannot defraud creditors, and would seem to be within a reasonable construction of the act. Or if not, the company may be dissolved, but why create a new liability? The final outcome of *Nunkittrick* v. *Perryman* will be interesting.

CONTRACTS — ACCEPTANCE OF PART PERFORMANCE. — The recent case of *Silberman* v. *Fretz*, reported in 14 New York Law Journal, 1697, though in reality decided upon simple and undisputed grounds, is interesting in its relation to the vexed subject of "divisible" contracts. Under a contract to deliver several parcels of cloth, at different times, the seller delivered only the first parcel, which the buyer accepted. Prior to the delivery of this parcel the seller informed the buyer that he would not be able to deliver the remaining lots at the agreed times; and the buyer therefore knew that this delivery was complete in itself, and accepted it as such. The court rightly held that under these circumstances the buyer became immediately liable for the agreed price of this parcel, no time of payment having been fixed. There was such a distinct waiver of full performance as a condition precedent to payment for this lot as to make it fairly evident, without any necessity of plunging into the obscure question about the "severability," "divisibility," or "apportionment" of contracts, that the defendant has in effect consented to pay at the agreed price for this parcel, whether he gets the rest or not. The case does not, however, help towards the decision of the vexed question as to whether the defendant would have been liable if he had accepted the goods, but not under such circumstances as to show a waiver of further performance. If he had accepted the first lot of cloth, and immediately worked it up, so that returning the goods was out of the question, but expected at the time of acceptance to receive the remainder in due time, it would not seem right that he should have to pay for it at the contract price. He would have to do so in England (*Oxendale* v. *Wetherill*, 9 B. & C. 441); in Massachusetts (*Bowker* v. *Hoyt*, 18 Pick. 555), and in some other States; but the New York courts long ago decided to the contrary in *Champlain* v. *Rowley*, 18 Wend. 632; and the question is still in dispute. The contract in such cases is evidently intended to be entire, and the courts all recognize it as being originally such; but after an acceptance of part performance the question arises whether that part of the contract should not be regarded as completed in itself, and as divided off from the rest of the contract by the acts of the parties. This view, which ex-